INDEX

	PAGE
I. Question Presented	1
II. Counter Statement of Facts	2
III. Decision of the District Court	7
IV. Affirmance by the Court of Appeals	8
V. Argument	9
VI. Conclusion	13

Cases Cited

Baltimore & Ohio Railroad Company v. Stankard, 56 O. S. 224, 46 N. E. 577 (1897)	10
Boblitt v. Cleveland C. C. and St. L. Ry. Company, 29 O. O. 65, 73 O. App. 339, 56 N. E. (2d) 348 (1943)	10
Fish v. Huddell, 51 F. (2d) 319 (1931)	9
Gorham Mfg. Co. v. Tax Commission, 266 U. S. 265 (1924)	11
Hahn v. Elliott, 28 O. L. Abs. 353 (1939)	10
International Union v. Owens, 119 O. S. 94, 162 N. E. 386 (1928)	9
Mace v. Carpenters and Joiners, 31 O. N. P. (N.S.) 17 (C. P. 1933)	10
Myers v. Jenkins, Administrator, 63 O. S. 101, 57 N. E. 1089 (1900)	10
Myers v. Bethlehem Corp., 303 U. S. 41 (1938)	11
Macauley v. Waterman Steamship Co., 321 U. S. 540 (1946)	11
Utley v. St. Petersburg, 292 U. S. 106 (1934)	11
Ward v. Campbell, 14 O. O. 493, 1 O. Supp. 192 (C. P. 1939)	10

No. ———

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, Individually and as Grand President of the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an Unincorporated Organization, as Chairman of the Grand Executive Council of Said Grand Lodge, and as Representative of Said Grand Executive Council, Grand Lodge and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an Unincorporated Organization,

PHIL E. ZIEGLER, Individually and as Grand Secretary-Treasurer of the Grand Lodge, etc.,

ROBERT MORGAN, Individually and as Vice Grand President of the Grand Lodge, etc.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. QUESTION PRESENTED

The respondents deny that the "summary statement" in the petition correctly sets forth the facts which were found by the district court after a hearing on the evidence presented by petitioner. Respondents further submit that the facts, when properly and correctly stated, do not present the questions which petitioner alleges to exist.

The only question involved in the present case is—**whether a union officer, found guilty of fraud and dishonesty in his expense accounts and suspended by the chief executive officer, and whose suspension has been affirmed by the Grand Executive Council of his union, and who has appealed to the supreme tribunal of the union, as provided in the union constitution, which appeal is pending and will shortly be heard, may resort to the courts for injunctive reinstatement before that appeal is determined and before exhausting his remedies within the organization, as required both by the union constitution and by the general law.**

The question concerns no one but the petitioner. The courts below decided that the petitioner's resort to the courts was premature and that he must first exhaust the remedies provided by his own organization. He has appealed from the subordinate tribunals of the union to its supreme tribunal, the international convention, seeking to reverse his conviction and suspension. That appeal will be heard this coming May. Should the convention decide in favor of the petitioner, it is obvious that his alleged complaint will be entirely moot—since the union constitution provides that in such event he shall be restored to all of his rights. Should the convention uphold the subordinate tribunals, the courts will then be open to redress whatever wrong or injury petitioner may be able to establish.

At this posture, therefore, the lower courts held that his resort to a court of equity was clearly premature. He cannot prosecute two appeals, one within the union and another in the court.

II. COUNTER STATEMENT OF FACTS

In view of our contention that the statement of facts contained in the petition is shot through with error, we believe it necessary to make the following chronological resumé.

Every statement contained in this summary is taken from the findings of fact made by the district court (R. 107-113). Of these findings, the Court of Appeals for the Sixth Circuit said in its opinion (R. 156):

> "All the findings of the district court are supported by substantial evidence, and certainly cannot be said to be clearly erroneous. Wherefore, the findings are accepted here."[1]

The Brotherhood is an unincorporated international labor union organized under a written constitution (R. 42, 108, Ex. D). Until suspended on August 15, 1945, the petitioner Reigel was a member and international officer, one of the Vice Grand Presidents (R. 34, 107). Upon induction into office he had taken a ritual oath to obey the constitution and laws of the Brotherhood, stating, in part:

> "I further promise and declare that I will not under any circumstances resort to or bring suit in any court or courts either Federal, State or Provincial **until I have exhausted all my rights and used all means at my command within and under the laws of the Brotherhood**" (R. 41, 42, 108, 109, Ex. A).

Similarly Article 5, Sec. 2 of the constitution provides:

> "No officer, member or subordinate unit of the Brotherhood may resort to any Court of Law or Equity or other civil authority either as parties plaintiff or for the purpose of securing an opinion or decision in connection with any alleged grievance or wrong concerning any case in controversy arising within the organization or under its law, **until such officer, member or subordinate unit first shall have exhausted all remedies by appeal or otherwise provided herein for the settlement and disposition of such alleged rights, grievances or wrongs**" (R. 109, Ex. D).

[1] In his brief, p. 5, Reigel claims the findings were not justified by the evidence, but the Court of Appeals has disposed of this argument. We also include direct record references which demonstrate the ample basis for the findings.

The Board of Trustees is elected by the quadrennial convention, and is charged by the constitution with the duty of auditing the accounts of the Brotherhood (R. 109, Ex. D, Art. 17, Sec. 1). On July 16, 1945 the board commenced an examination of the expense accounts submitted by Reigel as Vice Grand President (R. 110, Ex. E). On July 30, at the board's request, Reigel appeared before the trustees and was questioned about his accounts (R. 110, Ex. E-2).

On August 15, 1945 the board formally notified the Respondent Harrison, as Grand President, **that Reigel had submitted deceptive and fraudulent expense accounts and received money for expenses not incurred in discharge of his duties and business of the Brotherhood.** (R. 110, Ex. E-3).[2]

After receipt of the Board's communication, Harrison, in his official capacity, notified Reigel in writing that he was suspended as a member of the Brotherhood for violation of its constitution and laws and for conduct unbecoming an officer or member of the organization. The notice specified the articles and sections violated and contained a complete and specific statement of the alleged misconduct, concluding with the statement that Reigel would be granted a hearing on request (R. 110, Ex. F-1).

The Grand President acted under Article 13, Sec. 11(a) of the constitution (R. 111), which provides:

> "He (the Grand President) shall have power to suspend **any member** for violation of the Constitution and laws of the Brotherhood or conduct unbecoming **an officer or member** of the organization, but the cause of suspension shall be submitted in writing to the suspended member and must expressly state each and all

[2] Petitioner's brief at p. 2 makes the baseless contention that in Feb. and March substantially all of his duties had been taken from him. Actually he was then specifically assigned a great many most important duties (Ex. F, pp. 352-355).

of the Articles and Sections of the law violated, and it shall contain a complete and specific statement of the alleged misconduct. Such written statement of the Grand President will constitute the sole basis for suspension."

"**A suspended member shall have the right of appeal to the Grand Executive Council** as hereinafter provided, and if the Grand Executive Council sustains the suspension it shall become permanent **unless reversed by the next Grand Lodge Convention.** If the suspension be not sustained, the member affected shall be restored to good standing in the Brotherhood with all rights and privileges due him as if he had never been suspended. The member or members shall be reimbursed out of the funds of the Grand Lodge for all legitimate expense incurred by him or them in handling the matter of the suspension" (Ex. D).[3]

Reigel did not accept the hearing offered him, but appealed from the action of the Grand President to the Grand Executive Council (R. 111, Ex. F-2). The council heard the appeal on October 11 and 12, 1945. Reigel appeared in person and was represented by counsel. Neither Harrison nor the respondent Ziegler, Grand Secretary-Treasurer, participated in the deliberation or decision of the council (R. 111, Ex. F). On October 13, 1945 the council, exclusive of Harrison and Ziegler, and consisting of the six remaining Vice Grand Presidents, **voted unanimously to sustain the action of the Grand President and duly notified Reigel** (R. 111, Ex. H).

Section 15, Article 16 of the constitution provides:

[3] The petitioner repeatedly complains that he was deprived of his office without "due process" in violation of Art. 10, Section 1 of the union constitution. The process there referred to indisputably is that provided by the union constitution. The district court expressly found that the president suspended Reigel under Article 13 and complied with all of its requirements. He has also been given every right granted by the constitution during the course of his appeals.

> "Any member of the Brotherhood feeling aggrieved by the decision of the Council **may appeal to the Grand Lodge Convention** within sixty days after such decision, . . ." (Ex. D).

On October 31, 1945, **without having exercised his right to appeal to the convention**, Reigel appealed to the courts by commencing this action in the district court against the Brotherhood and its officers for an injunction restoring him to his membership and office (R. 1, 112). Thereafter, on December 4, 1945, and within the time granted by the constitution, **Reigel duly filed a written appeal to the convention** from the decision of the council (R. 96, 112, Ex. G). The appeal was duly received and acknowledged, is now pending, and will be heard in due course by the convention at the next meeting of the Grand Lodge to be held in Cincinnati, Ohio in May, 1947 (R. 112).

After a full and complete hearing of the petitioner's complaints the district court found expressly (R. 113):

> "The Grand Lodge is so constituted **as to insure the plaintiff, Reigel, that his appeal will be heard by a representative body which has the power to give plaintiff full and complete relief if his suspension be not sustained.** The delegates to said Convention have not been elected and the provision for their election and qualification guarantees that they will be thoroughly representative of the entire membership of the Brotherhood" (Article 6 and succeeding sections).[4]
>
> "(10) Article 13 of the Brotherhood Constitution empowers the Grand President to exercise general supervision over all the affairs of the Brotherhood (Section 1); provides that he shall enforce strict observance of the Constitution laws, rules and regulations of the Brotherhood (Section 2); provides that he shall call to

[4] Petitioner's brief, p. 9, speaks of a limited and abortive appeal to a Convention not to be held for years. That statement is directly controverted by the court's finding.

account any member of the Brotherhood violating the same (Section 3); and, further provides that he shall have sole power and authority to interpret the Constitution and laws **subject to appeal to the Grand Executive Council** (Section 4)."[5]

III. DECISION OF THE DISTRICT COURT

The District Court for the Southern District of Ohio, Western Division, granted a motion for dismissal (R. 106). It rendered no formal opinion but did file conclusions of law (R. 114-115) which the Court of Appeals in its opinion has aptly summarized (R. 162) as being, in substance:

(1) That not having exhausted his available remedies within the Brotherhood to redress the grievances of which he complained, the plaintiff Reigel is not entitled to maintain his court action;

(2) That until the Grand Lodge Convention has had an opportunity to hear and determine the appeal of the plaintiff, his complaint is premature and must be dismissed;

(3) That inasmuch as the Grand Lodge Convention has power to grant complete redress and relief, the plaintiff by filing an appeal to that constituted authority, has elected to pursue and exhaust his remedies in the Brotherhood and is thereby precluded from proceeding in the United States District Court to try the identical controversy which he had appealed to the next Grand Lodge Convention of his union;

(4) And that, although the defendants had requested the court to make further findings of fact and conclusions of law upon other grounds urged in their motions and answers and although the other grounds urged in support of the

[5] The petitioner repeatedly claims that he was arbitrarily suspended by an autocratic president who bore him ill will. Actually, however, the Union Constitution prescribes many safeguards. The president, as chief executive, has considerable authority, but his acts are subject to review by the Council, in whose deliberations he may not participate (Art. 16, Sec. 12) and again by the democratically chosen and representative convention.

motion for dismissal have some merit, the court was not passing upon them for the reason that the findings of fact and conclusions of law made are deemed controlling.

IV. AFFIRMANCE BY THE COURT OF APPEALS

The Court of Appeals for the Sixth Circuit, Judges Hicks, Simons and Martin, affirmed the dismissal of the case (R. 151). The core of the opinion, reported in 157 F. (2d) 140, is found in the following excerpt (R. 162, 164):

> "Appellant insists that he has been deprived of his elective office in the Brotherhood in a manner not in consonance with due process of law. We are not impressed with the argument. His contention seems to rest upon alleged erroneous procedure by constituted officials within the Brotherhood. Whether those who made the charges against him chose the appropriate course, we need not decide. Appellant was at least given the opportunity to be heard and to defend himself against the charges of dishonesty levelled against him. As found by the district court, Reigel has not exhausted his remedies within the Brotherhood; and this being true, he is not entitled to maintain this court action. The decision of the district court was in conformity with the controlling law, that of Ohio, which is consistent with the general law. . . .
>
> "The applicable principle in the instant controversy is analogous to a long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedies have been exhausted. . . .
>
> "In view of the ground upon which our decision is rested, discussion of the other defensive propositions presented by appellees is unnecessary."

V. ARGUMENT

A. The Decision Is Not in Conflict with That of Any Other Circuit Court.

The petitioner fails to cite any decision of any circuit court pertaining to or even referring to the issue on which this case was decided, the necessity of exhausting intra-association remedies before resorting to the courts. On the other hand, the decision of the Circuit Court for the District of Columbia in *Fish* v. *Huddell,* 51 F. (2d) 319 (1931), cited by Judge Martin in the opinion, is squarely in line with the decision in this case.

B. The Decision Is Not in Conflict with Applicable Local Decisions as to the Local Law.

Again the petitioner fails to cite a single Ohio case with which he claims the instant decision conflicts. Instead he says (page 11), "no Ohio decided case is like the present one. . . ." And at page 13: The decision below was "probably in conflict with state law as yet unannounced by the highest court of the state."

Both the district court and the Court of Appeals considered *International Union* v. *Owens,* 119 O. S. 94, 162 N. E. 386 (1928), directly in point and decisive of the issue. There the Supreme Court of Ohio said:

> "It is a well-settled principle of law, recognized by the courts of this state and by the courts of other states, that the members of a fraternal association by adopting a constitution and by-laws and providing reasonable rules and regulations for settling their own disputes and by establishing their own tribunals of original, intermediate, and appellate jurisdiction, become bound thereby, provided such constitution, by-laws, rules and regulations do not contravene the laws of the State. It is also well settled that the members of such an association must conform to the reason-

able rules and regulations thereof and must exhaust all remedies within the association and before such regularly constituted tribunals."

The Court of Appeals also called attention to the fourth syllabus of *Myers* v. *Jenkins, Administrator,* 63 O. S. 101, 57 N. E. 1089 (1900).

The petitioner relies upon the holding in *Baltimore & Ohio Railroad Company* v. *Stankard,* 56 O. S. 224, 46 N. E. 577 (1897) that a regulation prohibiting a resort to the courts is invalid. That decision clearly indicates, however, that the regulation will be upheld, where, as in the Brotherhood Constitution, it only prohibits resort to the courts **before exhausting intra-association remedies.** As the Court of Appeals pointed out, that distinction is made in *Myers* v. *Jenkins, supra.*

The Court of Appeals also cited some of the decisions of the inferior courts of Ohio which are uniformly to the same effect. These cases are:

Hahn v. *Elliott,* 28 O. L. Abs. 353 (1939).
Ward v. *Campbell,* 14 O. O. 493, 1 O. Supp. 192 (C. P. 1939).
Boblitt v. *Cleveland C. C. and St. L. Ry. Company,* 29 O. O. 65, 73 O. App. 339, 56 N. E. (2d) 348 (1943).
Mace v. *Carpenters and Joiners,* 31 O. N. P. (N.S.) 17 (C. P. 1933).

C. The Decision Is Not upon Any Question of Federal Law.

The petitioner has not pointed to any question of federal law which he claims is involved. The only issue decided was the effect to be given to a provision in the constitution of an unincorporated association requiring a member or officer suspended for dishonesty to exhaust the remedies provided by its constitution for redress of his grievances **before resorting to the courts.**

D. The Lower Courts Have Not Departed from the Accepted and Usual Course of Judicial Proceedings.

As above noted, every reported Ohio decision is in accord with the ruling of the lower courts that a suspended member of a voluntary association must comply with a provision of its constitution by exhausting the appeals from such suspension thereby provided before resorting to the courts. The rule is analogous to that requiring exhaustion of administrative remedies as established by this court in such cases as *Gorham Mfg. Co.* v. *Tax Commission*, 266 U. S. 265 (1924); *Utley* v. *St. Petersburg*, 292 U. S. 106 (1934); *Myers* v. *Bethlehem Corp.*, 303 U. S. 41 (1938); *Macauley* v. *Waterman Steamship Co.*, 321 U. S. 540 (1946).

E. The Case Is Not One of Public Interest.

The result of the case affects only one person, Reigel. Even as to him, there has been as yet no final determination of any claim. He has pending his appeal to the Grand Lodge Convention which will meet in a few months and which the district court found to be a fairly selected and representative body with ample power to amend any wrong which it might find had been done to Reigel.

To date Reigel has never attempted to disprove the mass of evidence establishing that he submitted hundreds of false and fraudulent expense accounts and wrongfully received payment for expenses not incurred in connection with his employment. He had an opportunity to deny his guilt before the Board of Trustees. President Harrison offered him a hearing which he rejected. He appeared before the Grand Executive Council and was confronted with the damning evidence. He was on the witness stand in the district court. He has filed not less than seven briefs in the district court, the Court of Appeals and now in this

court, but he has not yet even tried to overcome the proof of his dishonesty and fraud.[6]

His only complaint is that he was suspended under the wrong procedure. He argues that when the Constitution authorizes the president to suspend any member for violation of the Constitution and laws or for conduct unbecoming an officer or member of the organization, the power extends only to members or perhaps to officers of local lodges but not to such an officer as he, an international vice president. It will be noted that Reigel cannot claim that the question affects the rights of more than a handful of people, not the members, but only the Grand Lodge officers of this particular union organized under this particular constitution. It is clear that the question is a private rather than a public one.

His theory has been rejected by the president who is empowered by the constitution to interpret its provisions, subject to appeal to the Grand Executive Council. The council has affirmed. He now has an appeal pending before the Brotherhood's final authority, the convention.

If he should there break his incriminating silence and establish his innocence, or prevail in his contention that despite his guilt the improper procedure for suspension was followed, the convention has power to give him complete redress and the question raised in the courts becomes moot. If the convention decides against him, the courts will be open to protect whatever rights he may have. At the present posture, before the convention has had an opportunity to hear his appeal, his action in the courts is obviously premature.

---

[6] Throughout his brief the petitioner tries to make it appear that he was removed by the arbitrary act of one man. The Board of Trustees, however, is directly elected by the convention and in no way subject to the control or supervision of the president. The president did not participate in the decision of the council which was composed of Reigel's six fellow vice-presidents, all of whom were elected by the convention. Again, his pending appeal will be decided by several hundred democratically elected delegates to the convention.

VI. CONCLUSION

We believe the petitioner has failed to establish any of the conditions laid down by this court as warranting the exercise of its judicial discretion in favor of review on a writ of certiorari. The decision is in strict accord with the law of Ohio as uniformly established by its courts and conforms to the rule prevailing throughout the country. The case does not affect the public but only the petitioner. Even his rights have not yet been finally determined adversely to his claims, for he has pending his appeal to the highest tribunal of his union. Under these circumstances we feel that the petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK E. WOOD,
ROBERT S. MARX,
LEONARD D. SLUTZ,
900 Traction Bldg.,
Cincinnati 2, Ohio,
Attorneys for Respondents.

Of Counsel:
NICHOLS, WOOD, MARX & GINTER